

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GRUBHUB INC. AND
TAKEAWAY.COM CENTRAL CORE B.V.,
PLAINTIFFS,

v.

THE KROGER CO. AND
RELISH LABS LLC,
DEFENDANTS.

CASE NO.: 1:21-cv-05312

JUDGE CHARLES R. NORGLÉ

MAGISTRATE JUDGE JEFFREY I.
CUMMINGS

DECLARATION OF MARGARET WAGNER PIEDEL
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I, Margaret Wagner Piedad, declare as follows:

1. I am a Paralegal for The Kroger Co. ("Kroger"). The matters stated herein are true and accurate and based on my own personal knowledge. I submit this declaration in support to the Motion for a Preliminary Injunction in the above-captioned proceeding.

2. The following exhibits are true and correct copies of the documents that they purport to be and were obtained by me by visiting the cited web location.

a. **Ex. MP1** - Kroger 2020 Fact Book at 3, available online at https://s1.q4cdn.com/137099145/files/doc_downloads/irw/fact_books/2020/KRO_FactBook2020_FINAL.pdf.



- b. **Ex. MP2** - Kroger Press Release from May 23, 2018, available online at <https://www.prnewswire.com/news-releases/kroger-and-home-chef-to-join-forces-to-revolutionize-mealtime-300653892.html> and printed on Nov. 1, 2021. The press release states:

“The Kroger Co. (NYSE: KR) and Home Chef, the country’s largest private meal company, today announced a merger agreement that will significantly accelerate availability of meal kits and position the combined company to lead the way in revolutionizing how families shop for, prep, and cook their meals... The pending merger comes on the heels of Home Chef’s 150% growth in 2017, \$250M in revenue, and two profitable quarters... This merger will introduce Kroger’s 60 million shoppers to Home Chef, enhance our ship-to-home and subscription capabilities, and contribute to *Restock Kroger*.” p. 1.

- c. **Ex. MP3** – Kroger Press Release from October 10, 2018, available online at <https://www.prnewswire.com/news-releases/kroger-and-home-chef-kick-off-nationwide-retail-rollout-300728570.html> and printed on Nov. 1, 2021 (“In an industry first, The Kroger Co. (NYSE: KR) and Home Chef today announced the launch of weekly rotating in-store meal kits at Kroger Family of Stores in select locations. In addition, the company will roll out a limited market test of the new Home Chef *Express* product, a quick-cook meal kit ready to eat in about 15 minutes.” p. 1).
- d. **Ex. MP4** - Kroger 2019 Fact Book, available online at https://s1.q4cdn.com/137099145/files/doc_downloads/irw/fact_books/2019-Fact-Book.pdf (“In 2019, we expanded the Home Chef assortment from 958 stores to 2,169 stores and are seeing double-digit growth in the Fresh Meal category.” p. 14).
- e. **Ex MP5** – Kroger Press Release from October 25, 2021, available online at <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2021/Krogers-Home->

[Chef-Surpasses-1-Billion-in-Annual-Sales/default.aspx](#) and printed on Nov. 1, 2021 (“The Kroger Co. (NYSE: KR) and Home Chef announced today the meal solutions brand reached \$1 billion in annual sales... Home Chef products can be purchased nationwide exclusively at more than 2,200 Kroger Family of Stores – both in-store and online via pickup or delivery – and through a home delivery subscription available at [www.homechef.com](#).” pp. 1-2).

f. **Ex. MP6** - Printout from Kroger’s website at <https://www.kroger.com/b/home-chef>, printed on Oct. 29, 2021.

g. **Ex. MP7** – Representative examples of Takeaway.com Central Core B.V.’s



(“Takeaway”) use of the mark (the “Takeaway Home” mark) from the following webpages, printed on Nov. 1, 2021:


- i) www.instagram.com/justeattakeaway/?hl=en
- ii) <https://www.uefa.com/partners/>
- iii) <https://www.facebook.com/thuisbezorgd/>
- iv) www.facebook.com/Lieferando.at/
- v) www.facebook.com/TakeawaycomBE/
- vi) <https://twitter.com/JustEatTakeaway>
- vii) <https://twitter.com/JustEatTakeaway/status/1448151760774868995/photo/1>
- viii) <https://twitter.com/JustEatTakeaway/status/1446028510804516864/photo/1>
- ix) Screenshots from www.justeattakeaway.com taken on Nov. 3, 2021.

h. **Ex. MP8** – Screenshot of the GRUBHUB mobile app, showing Grubhub Inc.’s (“Grubhub”) use of the Takeaway Home mark alone, taken on Nov. 1, 2021.

i. **Ex. MP9** – Screenshot of the SEAMLESS mobile app, showing Grubhub’s use of the Takeaway Home mark with the SEAMLESS mark, taken on Nov. 1, 2021.

j. **Ex. MP10** – Takeaway’s U.S. Application No. 79299249 for the Takeaway Home mark from the U.S. Patent and Trademark Office (“USPTO”).

k. **Ex. MP11** – The USPTO Examining Attorney’s Office Action issued against Takeaway’s Application No. 79299249 for the Takeaway Home mark on January 6, 2021.

- l. **Ex. MP12** – Takeaway’s Renunciation of U.S. Application No. 79299249, dated August 9, 2021, and the USPTO’s Notice of Abandonment issued against Application No. 79299249, dated August 29, 2021.
- m. **Ex. MP13** – Screenshots from www.instacart.com/store/kroger/search_v3/Home%20Chef%20Meal%20Kits, taken on Nov. 1, 2021.
- n. **Ex. MP14** – Phone screenshot of the Grubhub mobile app, Seamless mobile app, and Home Chef mobile app side by side, taken on Nov. 3, 2021.
- o. **Ex. MP15** – Printout of Home Chef’s Facebook page at www.facebook.com/realhomechef/, showing Home Chef’s use of the mark  (the “HC Home” mark), printed on Nov. 1, 2021.
- p. **Ex. MP16** – Printout from Home Chef’s Instagram page at www.instagram.com/realhomechef/, showing Home Chef’s use of the HC Home mark, printed on Nov. 1, 2021.
- q. **Ex. MP17** – Screenshots of Grubhub’s and Seamless’ Facebook, Instagram, Twitter and YouTube pages, printed on Nov. 1, 2021 from the following webpages:
 - i) <https://www.facebook.com/grubhub>
 - ii) <https://www.instagram.com/grubhub/>
 - iii) <https://twitter.com/grubhub>
 - iv) <https://www.youtube.com/user/grubhub>
 - v) <https://www.facebook.com/seamless/>
 - vi) <https://www.instagram.com/seamless/>
 - vii) <https://twitter.com/seamless>
- r. **Ex. MP18** - Printouts of the following webpages:
 - i) “Grubhub Information,” Auburn University Campus Dining information available at <http://campusdining.auburn.edu/grubhub-info/> and printed on Nov. 1, 2021;
 - ii) “Off-Campus Students: Order Home Chef through GRUBHUB using your Dining Dollars!” Auburn University Campus Dining information available at <https://auburn.campusdish.com/Home-Chef> and printed on Nov. 1, 2021;

- iii) “Home Chef offers students increased dining selection,” October 18, 2020, The Auburn Plainsman article available at <https://www.theplainsman.com/article/2020/10/home-chef-offers-students-increased-dining-selection> and printed on Nov. 1, 2021;
- iv) Facebook post from @AUTigerDining Facebook handle, September 30, 2020, available at www.facebook.com/AUTigerDining/photos/a.10155749206753160/10157939887978160/?type=3 and printed on Nov. 1, 2021.
- s. **Ex. MP19** – Photos of Home Chef and Grubhub gift cards for sale near each other at a Kroger retail store located at 2150 Dixie Highway, Ft. Mitchell, KY 41017, taken on Oct. 29, 2021.
- t. **Ex. MP20** – Printouts of my search results from the U.S. Patent and Trademark Office’s Trademark Electronic Search System, dated Oct. 29, 2021.
- u. **Ex. MP21** – Printout from <https://www.grubhub.com/>, dated Nov. 1, 2021.
- v. **Ex. MP22** – Printout from https://www.grubhub.com/delivery/cuisine/grocery_items, dated Nov. 1, 2021.
- w. **Ex. MP23** – Printout from <https://www.grubhub.com/plus>, dated Nov. 1, 2021.
- x. **Ex. MP24** – Printout from <https://www.grubhub.com/delivery/cities>, dated Nov. 1, 2021.
- y. **Ex. MP25** – “Grubhub Delivery Fee: How Much It Costs and How You Can Save,” Sept. 7, 2021, Ridester article available at <https://www.ridester.com/grubhub-delivery-fee/> and printed on Nov. 1, 2021.
- z. **Ex. MP26** – Printout from <https://www.justeattakeaway.com/our-markets>, printed on Nov. 1, 2021.
- aa. **Ex. MP27** – Printouts of the following webpages:
 - i) “Takeaway.com’s £6.2 Billion Merger with Just Eat,” June 8, 2020, Mergersight article available at <https://www.mergersight.com/post/takeaway-com-s-6-2-billion-merger-with-just-eat> and printed on Nov. 1, 2021
 - ii) “Delivery Wars 2.0: How Just Eat Takeaway, Uber Eats, Deliveroo, Zomato and other match up in the multi-billion dollar market,” August 5, 2021, Business of Business article available at <https://www.businessofbusiness.com/articles/delivery-wars-20-just-eat-takeaway-uber-eats-deliveroo-zomato-and-other-empires-fight-for-territory-billion-market/> and printed on Nov. 1, 2021. The article states:

At this point, the food delivery industry is dominated by just a handful of empire companies, some of which operate under many different brands

around the world... Before Just Eat Takeaway was born last February, both Just Eat and Takeaway.com, which were both founded in the 2000s, had substantial numbers of subsidiaries. Under Just Eat were Australia's Menulog, Canada's SkipTheDishes, and Brazil and Mexico's iFood. Takeaway, which had already acquired UK's Hungry House, Poland's Pyszne.pl, Israel's 10bis and several of Germany's top services: Lieferando.de, Lieferheld and Foodora, quintupled the size of Just Eat's restaurant network... According to Reuters, the [Grubhub] deal officially makes Just Eat Takeaway the largest food delivery company in the world outside of China, with 70 million users worldwide.

- iii) "Delivery Hero cedes German market to Takeaway.com," Dec. 20, 2018, Reuters article at <https://www.reuters.com/article/us-delivery-hero-divestiture-takeaway-co/delivery-hero-cedes-german-market-to-takeaway-com-idUSKCN1OK038> and printed on Nov. 1, 2021.
 - iv) "What you need to know about the European food delivery giant that beat Uber to a deal with Grubhub," June 11, 2020, CNBC article available at <https://www.cnbc.com/2020/06/11/what-is-just-eat-takeaway-all-you-need-to-know.html> and printed on Nov. 3, 2021.
- bb. **Ex. MP28** – Printouts of Grubhub Press Releases from the following webpages:
- i) "Grubhub History," Grubhub company timeline available at <https://about.grubhub.com/about-us/company-timeline/default.aspx> and printed on Nov. 1, 2021
 - ii) "GrubHub Secures \$50 Million and is Acquiring Campusfood and Allmenus," Sept. 14, 2011, Grubhub Press Release available at <https://media.grubhub.com/media/News/press-release-details/2011/GrubHub-Secures-50-Million-and-is-Acquiring-Campusfood-and-Allmenus/default.aspx> and printed on Nov. 1, 2021.
 - iii) "Seamless and GrubHub Announce Merger," May 20, 2013, Grubhub Press Release available at <https://media.grubhub.com/media/News/press-release-details/2013/Seamless-and-GrubHub-Announce-Merger/default.aspx> and printed on Nov. 1, 2021.
 - iv) "Grubhub Completes Acquisition of Restaurants On The Run," March 2, 2015, Grubhub Press Release available at <https://investors.grubhub.com/investors/press-releases/press-release-details/2015/GrubHub-Completes-Acquisition-Of-Restaurants-On-The-Run/default.aspx> and printed on Nov. 1, 2021.
 - v) "Grubhub Acquires Delivered Dash," Dec. 7, 2015, Grubhub Press Release available at <https://investors.grubhub.com/investors/press-releases/press-release-details/2015/GrubHub-Acquires-Delivered-Dish/default.aspx> and printed on Nov. 1, 2021.

- vi) “Grubhub Acquires Bask Labs,” Apr. 1, 2016, Grubhub Press Release available at <https://investors.grubhub.com/investors/press-releases/press-release-details/2016/Grubhub-Acquires-Bask-Labs/default.aspx> and printed on Nov. 1, 2021.
- vii) “Grubhub Completes Acquisition of LABite,” May 11, 2016, Grubhub Press Release available at <https://investors.grubhub.com/investors/press-releases/press-release-details/2016/Grubhub-Completes-Acquisition-Of-LAbite/default.aspx> and printed on Nov. 1, 2021.
- viii) “Grubhub Enters Into Agreement to Acquire Foodler,” June 8, 2017, Grubhub Press Release available at <https://investors.grubhub.com/investors/press-releases/press-release-details/2017/Grubhub-Enters-Into-Agreement-To-Acquire-Foodler/default.aspx> and printed on Nov. 1, 2021.
- ix) “Grubhub Completes Acquisition of Eat24,” Oct. 10, 2017, Grubhub Press Release available at <https://investors.grubhub.com/investors/press-releases/press-release-details/2017/Grubhub-Completes-Acquisition-of-Eat24/default.aspx> and printed on Nov. 1, 2021.
- x) “Grubhub Completes Acquisition of LevelUp,” Sept. 13, 2018, Grubhub Press Release available at <https://investors.grubhub.com/investors/press-releases/press-release-details/2018/Grubhub-Completes-Acquisition-of-LevelUp/default.aspx> and printed on Nov. 1, 2021.
- xi) “Grubhub Completes Acquisition of Tapingo,” Nov. 7, 2018, Grubhub Press Release available at <https://investors.grubhub.com/investors/press-releases/press-release-details/2018/Grubhub-Completes-Acquisition-of-Tapingo/default.aspx> and printed on Nov. 1, 2021.
- cc. **Ex. MP29** – “Just Eat Takeaway.com to combine with Grubhub to create a leading global online food delivery player,” June 10, 2020, Just Eat Takeaway.com Press Release available at https://s2.q4cdn.com/772508021/files/doc_downloads/2020/06/Just-Eat-Takeaway.com-to-combine-with-Grubhub-to-create-a-leading-global-online-food-delivery-player.pdf and printed on Nov. 1, 2021.
- dd. **Ex. MP30** – “Just Eat Takeaway.com completes acquisition of Grubhub,” June 15, 2021, Just Eat Takeaway.com Press Release available at https://s2.q4cdn.com/772508021/files/doc_downloads/2021/06/15-06-2021-Press-Release-Just-Eat-Takeaway.com-completes-acquisition-of-Grubhub.pdf and printed on Nov. 1, 2021.
- ee. **Ex. MP31** - “Grubhub to Update Its Branding to Align with JET’s Global Portfolio,” July 29, 2021, Grubhub Press Release available at <https://media.grubhub.com/media/News/press-release-details/2021/Grubhub-to-Update-Its-Branding-to-Align-with-JETs-Global-Portfolio/default.aspx> and printed Nov. 1, 2021.

- ff. **Ex. MP32** - “Grubhub Goes Orange,” Aug. 24, 2021, Grubhub Press Release available at <https://media.grubhub.com/media/News/press-release-details/2021/Grubhub-Goes-Orange/default.aspx> and printed Nov. 1, 2021.
- gg. **Ex. MP33** - Complaint in CO Craft LLC dba Freshcraft v. Grubhub Inc., Case No. 1:20-cv-01327 (D. Colo May 11, 2020) (“Grubhub, one of the largest restaurant delivery services in the United States, is knowingly employing a nationwide false advertising campaign to steer patrons to its partner restaurants by falsely declaring that its competitors are closed or not accepting online orders when they are in fact open for business.” ¶1).
- hh. **Ex. MP34** - Complaint in Lynn Scott, LLC et al. v. Grubhub Inc., Case No. 1:20-cv-06334 (N.D. Ill. Oct. 26, 2020) (“Grubhub’s inclusion of unaffiliated restaurants on its online platform is likely to cause - and has in fact caused – customer confusion as to those restaurants’ affiliation, connection, or association with Grubhub, as well as the source of the services offered through Grubhub’s website and mobile apps. Consumers reasonably believe that Grubhub’s inclusion of restaurants on its webpages and mobile apps means that Grubhub has partnered with and is working cooperatively with those restaurants to provide accurate, reliable, and timely food services.” ¶108).
- ii. **Ex. MP35** - Printouts of the following webpage articles:
 - i) “Grubhub Hit With Lawsuit for Listing Restaurants Without Permission,” Oct. 28, 2020, Eater article available at <https://www.eater.com/21537215/restaurants-sue-third-party-delivery-service-grubhub-for-listing-businesses-without-permission> and printed on Nov. 1, 2021. The article states:

Two restaurants have initiated a potential class-action lawsuit against GrubHub for allegedly listing 150,000 restaurants to its site without the businesses’ permission... Grubhub has explicitly made this false partnership part of their business strategy. Last October, CEO Matt Maloney said the company would be piloting a new initiative of adding more restaurants to its searchable database without entering into an official partnership with them, so customers would believe they had more delivery options with Grubhub, and wouldn’t switch to competitors... The same rep also previously told Eater that Grubhub essentially hoped that adding restaurants without their permission would convince them to join.
 - ii) “Chicago accuses Grubhub, DoorDash of deceptive business practices,” Aug. 30, 2021, Restaurant Dive article available at <https://www.restaurantdive.com/news/chicago-accuses-grubhub-doordash-of-deceptive-business-practices/605739/> and printed on Nov. 1, 2021. The article states:

Chicago filed two consumer protection lawsuits against DoorDash and Grubhub on Friday for ‘engaging in deceptive and unfair business practices that harm restaurants and mislead consumers,’ according to a

press release ... Grubhub is accused of publishing deceptive phone numbers and charging for calls that didn't result in orders; creating 'imposter websites' for restaurants which route consumers to Grubhub; and violating the city's emergency commission fee cap of 15%, which went into place in November 2020. Chicago also alleges Grubhub's 'save restaurants' campaigns during the pandemic were 'deceptive' because participating restaurants were forced to extend their contracts, cover the cost of the promotions and pay full commission on orders.

- iii) "Are GrubHub and DoorDash the Next Vertical Monopolists?," June 21, 2021, Chicago Policy Review article available at <https://chicagopolicyreview.org/2021/06/21/are-grubhub-and-doordash-the-next-vertical-monopolists/> and printed on Nov. 1, 2021. The article states:

As [Maureen "Moe" Tkacik of the American Economic Liberties] explains, the growth of both Grubhub and DoorDash has been characterized by their willingness to use exploitative tactics to coerce restaurants to join and stay on the platform. Grubhub in particular has been accused of 'cybersquatting' – buying up URLs with very similar names to local restaurants' real website URLs, and then leveraging search engine optimization to ensure Grubhub's links appear first in search results. This ensures that they get a commission on every online order, take-out or delivery, rather than just in-app delivery orders.

I declare under penalty of perjury that the foregoing is true and correct.



Executed on November 3, 2021

Margaret Wagner Piedel